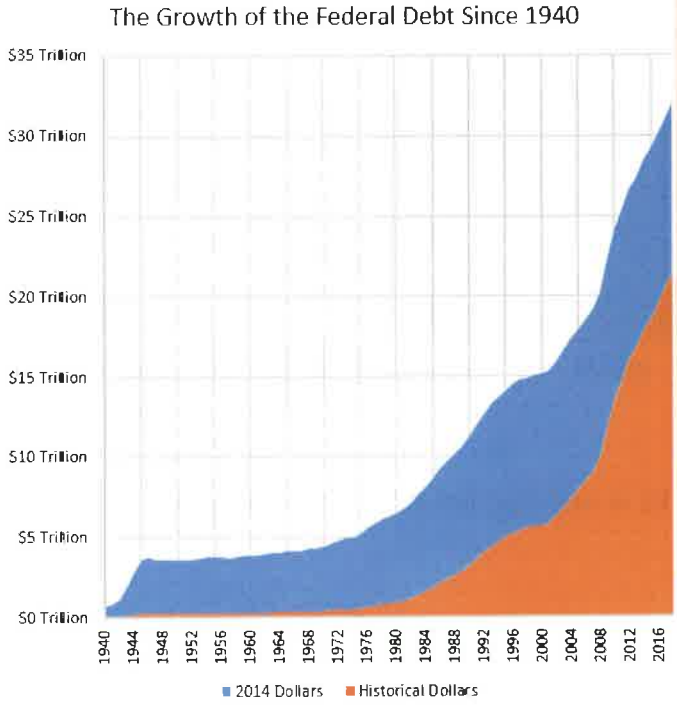
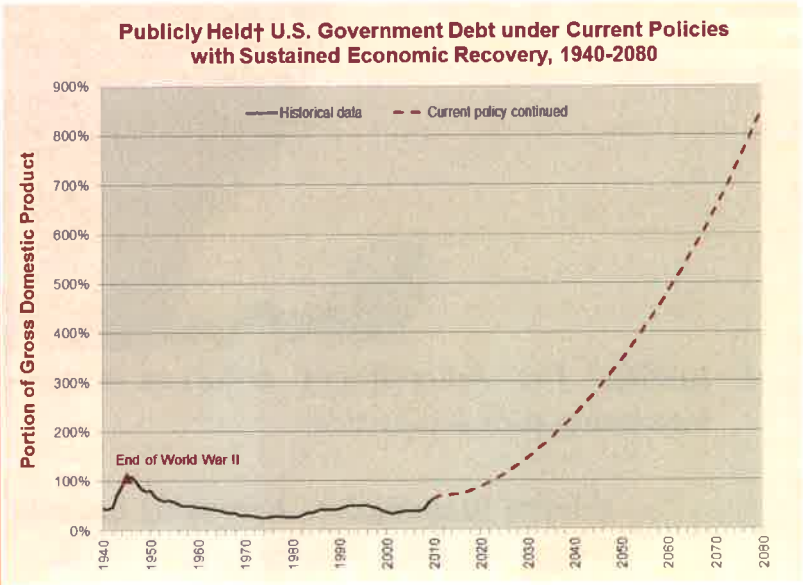
Certainty • Safety • Speed • Synergy

Why Compact for a Balanced Budget?

The National Debt Crisis Requires State Leadership





- **Certainty**: The Compact delivers **certainty** by pre-committing 38 states and simple majorities of Congress to everything involved in advancing, proposing and ratifying a federal Balanced Budget Amendment before an Article V convention is organized.

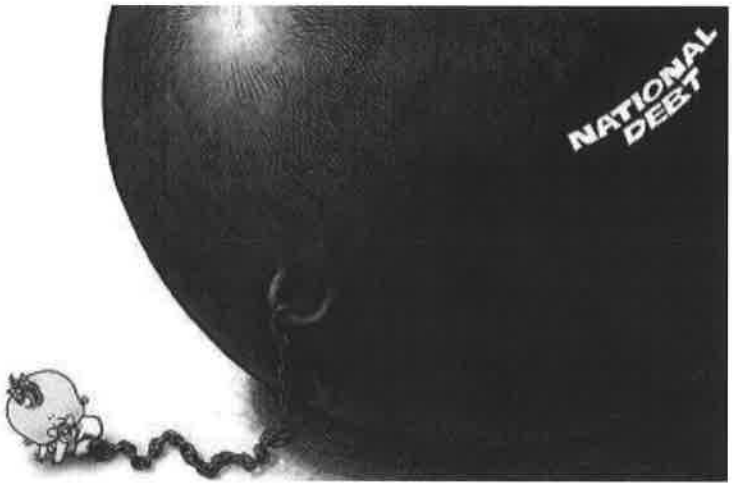
- **Safety**: The Compact promises **safety** by limiting the Article V convention it organizes to a 24 hour up-or-down vote on a specific federal Balanced Budget Amendment.

- **Speed**: The Compact furnishes **speed** by consolidating into one bill everything the states do in the amendment process and everything Congress does into one resolution.

- **Synergy**: The Compact ensures **synergy** because it pre-ratifies a powerful federal Balanced Budget that can be proposed by any convention with a compatible agenda or Congress.

Justice • Responsibility • Practicality

What's So Great about the Compact's Balanced Budget Amendment?



- **Justice**: The Amendment enforces a glide path to balanced budgets and stops intergenerational injustice.
    - It limits Washington's borrowing capacity to a specific amount and otherwise restricts federal spending to revenue at all times.
- **Responsibility**: The Amendment keeps all responsible revenue options on the table, but encourages spending reductions before tax increases to close deficits.
    - It requires supermajority approval for new or increased income or sales taxes, while retaining the current simple majority rule for revenue measures that will cause the least harm, such as eliminating tax loopholes.
- **Practicality**: The Amendment handles national emergencies with three "release valves" that do not enable easy evasion:
    - Washington can pay down the debt and free up borrowing capacity for emergencies.
    - The President can reprioritize or delay spending when a "red zone" of borrowing capacity is reached, subject to simple majority override by Congress.
    - Congress can request a majority of state legislatures to increase its borrowing capacity.

Greetings from the Commissioners of the Compact for a Balanced Budget:

We are writing to you and offering this testimony in our capacity as members of the Compact Commission for the Compact for a Balanced Budget (the "Compact".) Article IV of the Compact details the role of the Compact Commission. Each of the first three states to join the Compact can appoint a member to the Commission and the Commission activates when the first two members are appointed. In 2014, Georgia Governor Nathan Deal appointed State Representative **Paulette Rakestraw** as the Georgia Commission member. In the same year, Alaska Governor Sean Parnell appointed Lt. Gov. **Mead Treadwell** as the Alaska Commission member. With these appointments, the Compact Commission was formed.

The powers and duties of the Compact Commission include:

1. to encourage States to join the Compact and Congress to call the Convention in accordance with the Compact;
2. to appoint and oversee a Compact Administrator;
3. to coordinate the performance of obligations under the Compact;
4. to oversee the Convention's logistical operations as appropriate to ensure this Compact governs its proceedings;
5. to oversee the defense and enforcement of the Compact in appropriate legal venues;
6. to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and
7. to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact

In January of 2015, the Compact Commission appointed Compact for America Educational Foundation, Inc., and its staff ("CFA"), as the Compact Administrator and Technical Advisor. In this role, CFA's powers and duties are to assist the Commission members with their specific duties and to provide technical assistance and support, including providing expert testimony and technical advice before state legislative committees. CFA through its staff and expert advisors and consultants is authorized to speak on behalf of the Commission and to answer any and all questions you may have.

Our desire is for your state to join the Compact without delay. The reasons for joining the Compact for a Balanced Budget are four-fold:

First, debt is taxation if it is to be repaid. It is taxation of our kids and their kids. It is taxation without representation. It is the worst kind of taxation.

Second, there is no reliable political constraint on the abuse of debt when borrowing capacity is unlimited. This is because the costs of borrowing rarely, if ever, fall on currently elected officials or their constituents. Money is typically borrowed to pay the interest on the money that is borrowed. The borrowing and spending will likely continue until the system crashes, without a limit on borrowing capacity.

Third, responsible spending requires a limited borrowing capacity. Otherwise, there is little or no reason to prioritize spending or to pursue workable spending programs. Without such prioritization, we will waste resources needlessly. Because resources are ultimately scarce, there will come a time when the music will stop and the system will crash, imperiling both legitimate and illegitimate spending programs.

Fourth, unlimited borrowing capacity is dangerous to national security. In order to maintain our debt-spending habits, our country has no choice but to borrow from many potential or actual international adversaries. This could give foreign nations that are willing to risk their own economic injury significant leverage in influencing our policies. It is not wise to put our future in their hands and hope that their own prudential calculations would counsel against such behavior.

The Compact for a Balanced Budget is an innovative, streamlined vehicle to achieve a federal Balanced Budget Amendment that will address and enable us to remedy all of the problems associated with unlimited federal borrowing capacity.

We invite your great state to join the Compact and to help us protect future generations from unsustainable debt spending at the federal level.

Thank you.

Mead Treadwell
Alaska Compact Commissioner
Lieutenant Governor, State of Alaska (ret.)

Paulette Rakestraw
Georgia Compact Commissioner
Member, Georgia State House of Representatives

My name is Harold R. DeMoss, III, and I currently reside in Houston, Texas. I am the CEO of Compact for America Educational Foundation, Inc., and a member of the Board of Directors. Please allow me to introduce into testimony before your respective committees the following information:

- Written testimony from Judge Harold R. DeMoss, Jr. – Senior Judge (retired), U.S. Fifth Circuit Court of Appeals and member of the Foundation's Council of Scholars

- Written testimony from Ilya Shapiro, JD – Senior Fellow in Constitutional Studies at the Cato Institute, editor-in-chief of the *Cato Supreme Court Review* and member of the Foundation's Council of Scholars

- Written testimony from Byron Schlomach, PhD – Economist, former Director of the Center for Economic Prosperity at the Goldwater Institute, and member of the Foundation's Council of Scholars

- Written testimony from Sven Larson, PhD – Economist, former Senior Fellow in Economics at the Wyoming Liberty Group, and member of the Foundation's Council of Scholars

- Written testimony from Kevin Gutzman, JD, PhD – Professor and Director of Graduate Studies in the Department of History at Western Connecticut State University, New-York Times best-selling author of two books on constitutional history – *Who Killed the Constitution* and *The Politically Incorrect Guide to the Constitution*, and member of the Foundation's Council of Scholars

- Written Testimony (selections) from Lawrence Lessig, JD - Professor, Harvard Law School, and member of Compact for America Action's Advisory Council.

- Executive summary of national survey undertaken by McLaughlin & Associates that demonstrate that **six in ten** of voters favor a balanced budget amendment and **at least 70%** favor Compact for America's specific and common sense proposals to rein in the federal deficit.

Thank you for this opportunity to provide this testimony.

Harold R. DeMoss, III

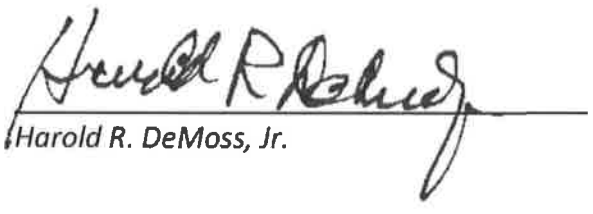
My name is Harold R. DeMoss, Jr., and I currently reside in Houston, Texas. I am writing to encourage you to support the Compact for a Balanced Budget. I am a retired Senior Judge on the United States Court of Appeals for the Fifth Circuit, I am writing this letter in a personal capacity and nothing herein should be construed as indicating the opinion of any other judge on the Fifth Circuit.

As a member of Compact for America's Council of Scholars, I can assure you that the Compact's legal and policy foundations have been thoroughly examined and vetted by numerous experts in the relevant fields. The fundamental underpinning of the Compact is the ability to resolve the concerns expressed by many of a possible "runaway" convention. These concerns are best exemplified in the famous "Twenty Questions" raised by the Eagle Forum. At the outset of the development of the Compact, we engaged Andy Schlafly, who is Phyllis Schlafly's son, a Harvard-trained constitutional attorney, and a member of the board of directors of Eagle Forum. I personally participated in conference calls with Andy to make sure that each of the Eagle Forum's concerns had been fully addressed in the Compact. Andy's input was invaluable, the Compact is a much better document because of it, and CFA has acknowledged the important role of Eagle Forum.

Additionally, you should find comfort in the fact that nothing happens with the Compact until Congress consents to the terms and provisions of the Compact. Three key provisions to highlight are that 1) the contemplated convention is limited to no more than 24 hours in duration; 2) the sole agenda item is the formal vote as to the proposal of the Balanced Budget Amendment contained in the Compact; and 3) the Compact is enforceable under state law, federal law, and under the Contract Clause of the U.S. Constitution under Article I, Section 10.

And finally, since the passage of the 17th Amendment a hundred years ago, the states have had very little role in the formation of federal policy. The Compact begins a process to reinsert the states back into the equation by placing them in a "Board of Directors" oversight capacity over Congress, with the sole authority to authorize a requested increase in the federal debt limit with approval of a majority of the state legislatures. In addition to attacking the problem of concentrated power in Washington DC, the Compact will also bring a halt to Congress' ability to borrow money without limit and will force Congress to act in a fiscally-responsible manner.

There is no doubt in my mind that time is growing short for leadership on fixing the national debt problem. In my opinion, Congress will not lead - only the states can. Your state has taken a leading role in uniting the states around the Compact to begin the travel along the road to restoring fiscal responsibility in our federal government. I very much appreciate your leadership and thank you for your consideration.



Harold R. DeMoss, Jr.

My name is Ilya Shapiro. I am a senior fellow in constitutional studies at the Cato Institute and the editor-in-chief of the *Cato Supreme Court Review*. I am also a member of the Advisory Council for Compact for America. Before joining Cato, I was a special assistant/advisor to the Multi-National Force in Iraq on rule of law issues and practiced international, political, and commercial litigation. I have provided testimony to Congress and state legislatures and, as coordinator of Cato's amicus brief program, have filed more than 100 "friend of the court" briefs in the U.S. Supreme Court. I lecture regularly on a variety of constitutional issues on behalf of the Federalist Society and other groups, am a member of the Legal Studies Institute's board of visitors at The Fund for American Studies, was an inaugural Washington Fellow at the National Review Institute, and have been an adjunct professor at the George Washington University School of Law. Before entering private practice, I clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit. I hold an A.B. from Princeton University, an M.Sc. from the London School of Economics, and a J.D. from the University of Chicago Law School.

I am an ardent support of the compact approach to Article V constitutional change because this method of constitutional amendment makes the path to to state-initiated constitutional reform quicker, easier and more legally certain. It allows states to agree in advance to everything they control in the amendment process in a single bill passed once by the state legislatures. It allows Congress to fulfill its entire role in the amendment process in a single resolution passed once. When time is of the essence and the country is in peril, this approach would allow constitutional change to occur within one legislative year. I know of no other approach to Article V that can do this with the certainty, efficiency and safety that is offered by the compact approach.

Above all, I believe the compact approach actual serves to minimize the risk of litigation, because only this method of constitutional amendment requires that state legislatures and Congress agree on all aspects of the process up-front. It is also important to me that the compact is able to address each and every one of the concerns that have been raised over the past 30 years by the Eagle Forum.

I have previously written about my support of the Balanced Budget Amendment that is the payload carried by the Compact for a Balanced Budget. Unlike the recent and continuous brinkmanship spurred by the statutory debt limit, the Compact for a Balance Budget is designed to force Washington to prepare a budget that makes the case for more debt long before the midnight hour arrives. It requires the president to start designating impoundments when spending exceeds 98% of the debt limit and then requires Congress to override those impoundments within 30 days with alternative cuts if it disagrees. By forcing both the executive and legislative branches to show their cards long in advance of the constitutional debt limit, this compact-turned-BBA would ensure that no game of chicken holds the country hostage. Because our debt problem is primarily a spending problem, the CBB would also require a two-thirds vote of both houses of Congress for any general tax increase. The proposed amendment would thereby ensure that any new tax burden assumed to pay down the debt would make our tax code flatter, fairer, and far more conducive to economic growth – which is the best way to prevent both debt spending and tax increases in the long run. The Compact for a Balanced Budget could permanently and structurally bridge future fiscal cliffs with a principled compromise that has been poll-tested to get at least 38 states on-board.

Thank you for giving this very important matter your attention. I also thank you for this opportunity to provide testimony to the committee.

Ilya Shapiro

My name is Byron Schlomach. I previously served as Director of the Center for Economic Prosperity at the Goldwater Institute in Phoenix, Arizona. After earning my bachelors and doctorate degrees at Texas A&M University, I entered public policy work at the Texas Legislature and then served as Chief Economist at the Texas Public Policy Foundation before coming to the Goldwater Institute. I have worked in public policy for 20 years. Much of the transparency movement originated with my efforts in Texas starting in the late 1990s. I was instrumental in the passage of a public/private partnership law for roads in Arizona, helped lead the way in resistance to establishing ObamaCare exchanges around the country, was instrumental in passage of a law to more easily privatize Arizona state parks, and have studied state budgets in both Arizona and Texas. Many of my recommendations for spending reductions in Arizona during the financial crisis were adopted.

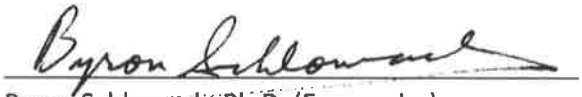
I have been a student of economics for over 30 years and a student of state policy as well as federal policy for nearly as long. The mounting debt of the federal government has long concerned me. Having seen how federal money is spent at the state level as well as the federal, it is not as if the $18 trillion debt was accumulated to win a war that threatened our existence. It was not accumulated in order to build roads, bridges, dams, and pipelines. The big spending has been in programs that have encouraged people to become dependent and irresponsible.

Ultimately, the mounting federal debt must end with the collapse of our nation's finances as debt has historically done-in Argentina, Germany, Greece, and Spain, just to name a few. The only prop for us now is our currency's status as the world's reserve currency, but the still-growing debt and the eventual release of bank reserves will devalue the dollar and eventually cause its rejection as a reserve currency. When that happens, inflation in the U.S. will skyrocket and our economy will be sent reeling. Our only chance is to stop debt accumulation and allow economic growth to catch up with our money printing.

The founding fathers wisely rested ultimate responsibility for the nation in the collective action of state legislatures by allowing them to amend the Constitution. Congress and the President have demonstrated their inability to control the federal fiscal budgetary process. They are marching us to oblivion. State legislators are all that currently stand in their way. You are the cavalry that must ride in to save the day.

Even in the face of long odds, the Compact for a Balanced Budget provides a winning strategy for passage of a constitutional amendment that will impose discipline on the federal government. Some are frozen by fear and risk. But the risk of doing nothing is much greater. We have reached a threshold. Will future generations look back at this one and wonder, if we'd had the courage, would their lives be better? Or will they look back with wonder at our courage and foresight. State legislators, it is up to you!

Thank you for this opportunity to provide written testimony to the committee.



Byron Schlomach, Ph.D. (Economics)

My name is Sven Larson. I am an economist formerly with the Wyoming Liberty Group, a think tank in Cheyenne, Wyoming. I am also a member of the Compact for America Council of Scholars. I received my BA in economics and philosophy from the University of Stockholm, Sweden and my PhD in Economics from Roskilde University in Denmark. My research is primarily focused on the role of government in the economy and on the effects of fiscal policy and deficits on government services. My most recent research contribution is a book wherein I present tangible reform ideas for key entitlement systems, including Social Security, welfare and health care, while taking into account the factors that contributed to the European crisis and their implications for the United States.

I accepted the invitation to join the Council of Scholars of Compact for America because of the urgency of our nation's debt crisis and because the amendment proposed by the Compact for a Balanced Budget provides the best path to a balanced budget of all proposals that I have studied.

Not too long ago our debt grew larger than our GDP. At that point, global investors started paying more attention to us. We saw this happen in several European countries: investors are worried, and worry-driven attention means investor bias. They start looking for reasons why we may default on our debt. As a consequence, the cost of our debt starts going up. We are already at a point where we pay higher interest rates on ten-year Treasury Bonds than some European countries.

As the Federal Reserve tapers off its quantitative easing, and interest rates continue to rise with our growing debt, Congress will have to divert more and more tax revenues to paying interest on our debt. This rapidly leads to challenging priority conflicts. It is not far-fetched that Congress, in a situation of fiscal panic, starts making drastic cuts to federal aid to states. This would perhaps temporarily ease the debt crisis at the federal level, but it would do so by transferring the crisis to the states. State legislators would be left with gaping holes in programs such as Medicaid, public education, welfare and transportation, and an obligation to find a way to fill them with new in-state revenue.

There are not many ways to prevent this fiscal-panic scenario from unfolding, but the balanced-budget amendment proposed by Compact for a Balanced Budget is a good example of how it can be done. It is, in fact, to the best of my scholarly judgment, the best balanced-budget amendment ever proposed - not because it immediately brings about a balanced budget - but because of its dynamic properties. Its strength lies in that it creates a pathway to that balanced budget, a pathway that is predictable, inevitable and transparent. The pathway allows us to close the federal budget gap without the risk of fiscal panic. It will not only change for the better how Congress manages taxpayers' money, but it will also send a strong signal to global investors that the United States is now serious about solving its debt problems.

I thank you for this opportunity to provide written testimony on behalf of the Compact for a Balanced Budget.

Sven R. Larson, Ph.D.

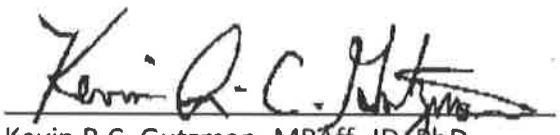
My name is Kevin Gutzman and I am Professor and Director of Graduate Studies in the Department of History at Western Connecticut State University. I received my Master of Public Affairs from the Lyndon B. Johnson School of Public Affairs at the University of Texas, my Juris Doctor from the University of Texas School of Law, and my Master of Arts and Doctor of Philosophy in American history from the University of Virginia. My area of scholarly expertise is American constitutional and intellectual history. I have published scholarly articles in several of the leading history journals, two best-selling books in constitutional history, and two books on the American Revolution and Early Republic-most recently, James Madison and the Making of America.

I enthusiastically endorse the Interstate compact approach to a balanced budget amendment. Not only is this endeavor a moral imperative, but it is entirely in keeping with the Founding Fathers' understanding of the way that American constitutionalism would work.

Presently, the Federal Government's debt tops $18 trillion. More ominously, estimates of the Federal Government's unfunded obligations range between $50 trillion and $222 trillion. While I am more prone to accept the latter figure, I am certain that anything in this range represents coming calamity. Reasonable people on both sides of the aisle recognize the urgency of this issue. Still, Congress seems unable meaningfully to tackle, or even to consider, this problem. James Buchanan's Public Choice Theory, for which he won the Nobel Prize in Economics, tells us that without a change to the system, we can expect the system to continue to produce similar results. In short, if we want an end to the profligacy, we need to amend the Constitution. We need to rein in Congress. Experience has revealed a flaw in our constitutional system, precisely as the Founding Fathers expected it would, and that is why they thought amendment would occasionally be necessary.

Congressional failure to address its own misbehavior is precisely the problem with which George Mason intended to deal when he insisted In the Philadelphia Convention that Article V of the Constitution include a provision enabling the states to initiate the amendment process. An interstate compact is the best mechanism for the states to ensure that the convention they call will address and vote on precisely and only the measure the states have in mind for the convention to adopt. This is entirely In keeping with the explanation of the amendment process given by prominent Federalists during the ratification process in 1788.

In my judgment, passing this measure is a moral imperative. Thank you for hearing me.



Kevin R.C. Gutzman, MPAff, JD, PhD
Western Connecticut State University

TESTIMONY OF LAWRENCE LESSIG ROY L. FURMAN PROFESSOR OF LAW AND LEADERSHIP HARVARD LAW SCHOOL

ASSEMBLY OF STATE LEGISLATURES JUDICIARY COMMITTEE

DECEMBER 8, 2014

I am honored by the opportunity to testify in this proceeding, both because I believe state legislatures (and hence state legislators) were to be the constitutional backstop within our tradition, and because I view you to be among the unfortunately few who are taking up that responsibility. We all agree, whether Democrats or Republicans or Independents, that our nation faces grave threats of governance. You believe, and I agree with you, that as state legislators, you have a critical role in resolving those threats. I admire the work you are doing to live up to that responsibility.

I am a professor of law at Harvard Law School. Since 1991, I have been teaching and writing in the areas of constitutional law and constitutional theory. I was involved in the transition of a number of Central and Eastern European countries after 1989, and was involved in the drafting of the constitution of the former-Soviet Republic of Georgia. I have written about the Article V method for proposing amendments to the Constitution in my book, *Republic, Lost* (2011).

You have ask for my opinion about a relatively narrow set of questions. I have sketched my answers to those that I feel competent to address below. But at the outset, I want to state my understanding of the state of the debate about the nature of an Article V convention, and the political conditions under which it might succeed.

It is my firm belief that the convention referred to in Article V is a very limited institution. It is not a "constitutional convention," as that term is understood in constitutional theory. It is instead a "proposing convention." Its sole power is to propose

amendments that the states then consider. It has no power to amend the existing constitution. It has no power to change the mode by which amendments might be adopted. Whatever the Convention of 1787 was, a convention called pursuant to Article V is a different, and lesser convention. What they did then an Article V convention could not do now.

I also believe that the scope of an Article V convention can be limited. How such a limit would be enforced is a separate question. But that it can be limited seems to me beyond question. The states, in their application to Congress, can specify the topics they would like a convention to consider. When 34 states concur on a similar topic, it is Congress' duty to make the call. That is not to say that the question whether an application is in fact a limited application is an easy interpretive question. Scholars of Article V acknowledge that the rules for counting are complicated. But there should be no doubt that if 34 states sent to Congress an application to make the New England Patriots the national football team (to offer a more plausible hypothetical than the Committee's Responsibility Form), and stated that the convention is to be limited to that question and only that question, the convention called by Congress would then be so limited.

But these legal questions notwithstanding, it is also my view that within the current political environment, the only way that an Article V convention could succeed is if it avoided being framed in partisan way. The only way to do that would be to open the convention to considering proposals viewed to be from the left and right. A convention limited to issues perceived to be from the right alone would be the greatest fundraising gift to the Democratic Party since the Iraq War. And this committee could be certain that the very idea of such a convention would motivate Democrats and some progressives to launch a massive fear campaign about this "uncertain and ancient forum" that could "run away" and thereby "destroy" a whole tradition of constitutional rights. The same would be true the other way around. It is my view that *only* way to earn the confidence of the American people that the convention is not a partisan putsch is to commit fundamentally to a cross-partisan agenda.

The Proposing Convention of Article V is a gift from the framers to deal with precisely the pathologies in government that

we face today. I am grateful to you for accepting the responsibility that it places on you as state representatives, to use that gift to address these pathologies. I would only urge that you deploy it in a way that avoids the most obvious political response, and hence, almost certain failure.

QUESTIONS PRESENTED

1. *Process to ensure that the Compact Clause in Article 1 Section 10 of the Constitution is not triggered.*

Whether the activities of the ASL will trigger the obligations of the Compact Clause depends upon the nature of those activities. The Court has narrowed the reach of the Compact Clause substantially. So narrowed, so long as any compact does not purport to restrict the activities of any federal entity, or encroach on federal power, it is not subject to the requirements of the Compact Clause.

The clear and legitimate purpose of Compact Clause was to assure that states didn't combine to aggrandize their own power, relative either to other states or the federal government.

This is the understanding the Supreme Court has given to the Clause in *Virginia v. Tennessee,* 148 U.S. 503, 518 (1893). In that case, the Court acknowledged that the plain language of the clause reached every kind of agreement. But after considering a range of agreements that could not possibly have been meant be regulated by the Constitution, the Court concluded that there must be a line to distinguish between agreements within the scope of the Constitution, and agreements outside the scope. As the Court wrote,

> If, then, the terms 'compact' or 'agreement' in the constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of congress must be obtained, to what compacts or agreements does the constitution apply?

Virginia v. Tennessee, 148 U.S. 503, 518 (1893).

Answering this question, the Court relied on the purpose of the clause:

> Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.

Id. at 519.

The question as Justice Story framed it is whether the agreement "infring[es on] the rights of the national government," *id.*, and if not, the consent of Congress is not required.

The Court has further narrowed the scope of the Clause by restricting the range of "agreements" that are within its reach. States engage in many forms of cooperation — model legislation, for example. In *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System,* 472 U.S. 158 (1985), the Court made clear that every form of cooperation is not a "compact." In questioning whether the agreement at issue in that case qualified as a "Compact," the Court wrote:

> No joint organization or body has been established to regulate regional banking or for any other purpose. Neither statute is conditioned on action by the other State, and each State is free to modify or repeal its law unilaterally.

Id. at 175.

Thus as applied to the work of the ASL, there are two questions: First, does any particular agreement affect a federal interest. Second, even if it does, is the nature of the agreement properly conceived as a Compact.

To the extent the work of the ASL simply coordinates states making application to Congress, it would fail the first of these two conditions. The power to make such application is clearly a state power. Coordination around that power does not render it federal . . . .

McLaughlin & Associates

To: Chip DeMoss: Chairman/CEO – Compact for America
From: John McLaughlin
Re: National Survey – Executive Summary
Date: January 14, 2013

Survey Summary: Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America's specific and common sense proposals to rein in the federal deficit. These survey results demonstrate that Compact for America has the potential to obtain broad support.

- ✓ After being probed about the failed leadership in Washington and the fiscal instability of the United States, 62% favor a constitutional amendment to balance the federal budget annually, while 24 oppose. Intensity is strong among those who favor the amendment, 41% strongly favor to 21% somewhat favor.

President Obama and Congress have failed to provide leadership, which is causing gridlock and partisanship in Washington and has made it impossible to pass meaningful legislation to balance the federal budget. Currently, the United States is borrowing over 40 cents on every dollar it spends and the credit of the United States has been downgraded for the first time in history. Knowing all of this, would you favor or oppose a constitutional amendment that would require the President and Congress to operate the federal government under an annual balanced budget?

	TOTAL
Favor	**62%**
Strongly Favor	41%
Somewhat Favor	21%
Oppose	**24%**
Somewhat Oppose	9%
Strongly Oppose	15%
DK/Refused	**13%**

More specifically, please tell me if you would favor or oppose each of the following provision in a balanced budget amendment.

	Favor/Oppose
Requiring a roll call vote by each member of Congress when a tax increase is proposed.	**81%/11%**
Limiting the amount of money the federal government can borrow.	**75%/20%**
Prohibiting the federal government from spending more than it takes in each year.	**72%/22%**
Requiring the President to make the appropriate spending cuts to remain within the debt limit when Congress is unable to borrow more money or raise additional taxes.	**72%/18%**
Cutting spending **FIRST** before taxes are raised or additional money is borrowed if the federal government spends more than it takes in.	**71%/21%**

Methodology: This national survey of 1,000 likely general election voters was conducted on from June 10th – June 12th, 2012. All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined geographic units. These units were structured to correlate with actual voter distributions in a nationwide general election. This national survey of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval.

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Policy Brief

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Why Michigan Should Compact for a Federal Balanced Budget Amendment

By Nick Dranias

Introduction

Article V of the U.S. Constitution requires Congress to call a convention for proposing amendments "on the Application of the Legislatures of two thirds of the several States."[1] Gov. Rick Snyder and the Michigan Legislature have expressed interest in using this state-led mechanism to require Congress to balance the federal budget and passed a resolution calling for such a constitutional amendment in 2014.[2]

The problem is that the states have never successfully used Article V to amend the Constitution since they ratified it 227 years ago. One reason for this is that the process of using Article V, as it has been traditionally envisioned, requires numerous legislative and congressional actions — all of which could derail the effort. For example, Gov. Snyder and the Legislature could not agree on the next legislative step — the appointment of delegates to the convention — and Michigan's attempt to amend the U.S. Constitution via Article V has stopped dead in its tracks.[3]

As the Michigan example demonstrates, amending the Constitution via a state-initiated convention is by no means a quick or certain means of obtaining redress for constitutional problems. The passage of an Article V application by an individual state is just the first step in a long series of contingent legislative steps towards successfully generating an amendment. These steps raise many questions:

- Can substantively different applications from individual states be aggregated?
- Will Congress fulfill its constitutional duty to call the convention?
- Will Congress stand back, as it should, and allow the applying states to conduct the convention by their own standards?
- Can one state effectively enforce a limited convention agenda against another state?
- Will the convention ever actually generate an amendment?
- Will the convention ever adjourn?
- Will the amendment be good public policy?
- Will Congress sabotage the ratification process?
- Will 38 states ratify the amendment?

These questions illustrate that the "legacy approach" to amending the Constitution via Article V involves a large legislative investment towards a speculative result. Fortunately, there is an alternative: the "Compact approach" to using Article V.

The Compact for a Balanced Budget is an example of such an approach. It is a formal interstate agreement that advances, proposes and ratifies a federal Balanced Budget Amendment in one bill — a single legislative

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action — passed by 38 state legislatures. The Compact commits these states (three-quarters of the total, which is the amount needed for ratification) to the entire constitutional amendment process in advance, so that a specific, pre-drafted federal Balanced Budget Amendment is voted up or down within 24 hours at the convention it organizes. The convention is set in motion by a single congressional resolution, passed with simple majorities and with no presidential signature, which both calls the 24-hour convention and selects legislative ratification in advance.

Additionally, recent research shows that the Founders meant for the Article V convention to be used by the states to propose specific constitutional amendments.* By targeting an Article V convention and securing ratification of its proposed amendments by three-fourths of the states, state legislatures could conceivably remedy the entire spectrum of perceived federal error, abuse, overreach and incompetence.

The Compact approach is truly "Article V 2.0." This paper will describe the four main advantages of using the Compact approach to pass a federal Balanced Budget Amendment via Article V. These advantages are 1) certainty, 2) safety, 3) synergy and 4) speed.

Certainty

All efforts to originate constitutional amendments from the states require the organization of a convention for proposing amendments under Article V of the U.S. Constitution. The Compact for a Balanced Budget ensures that states know precisely how the convention will operate and what the convention will produce before it is called.

The necessary agreement among the states (the actual "Compact") and the compact-activating congressional resolution predetermine all of the following:

- The application to Congress[4]
- The identity and exact instruction of the convention delegates[5]
- The convention agenda[6]
- A pre-commitment to considering the proposal of a specific federal Balanced Budget Amendment and no other amendment[7]
- The convention rules and logistics[8]
- A pre-commitment to ratifying the contemplated Balanced Budget Amendment if it is proposed[9]

The most important of these elements is the pre-commitment to a specific federal Balanced Budget Amendment. Unlike the legacy approach, the Compact allows legislators to read, assess and vet the only amendment that will be proposed at the convention — instead of delegating this authority to a body of yet-to-be-determined delegates.

Appendix A includes a detailed sectional analysis of the amendment advanced by the Compact for a Balanced Budget. The Compact approach to Article V is backed by recent research on the original interpretation of the U.S. Constitution (discussed in Appendix B). That research shows that the Article V application was originally meant to advance the specific text of one or more amendments to be proposed by the convention.

The Compact for a Balanced Budget also maintains a reasonable degree of certainty by organizing a commission to oversee the amendment process, enforce the Compact, manage logistics and confer with Congress and other states to keep everything on track. In fact, the Compact for a Balanced Budget Commission is already up and running.[10] The only question left open by the Compact is whether the convention it organizes will propose the contemplated federal Balanced Budget Amendment.

* See "Appendix B: Research on the Original Meaning of Article V."

Safety

A Compact approach to Article V allows for four political and legal safeguards, which, in combination with the ratification requirement for any proposed amendment, makes it implausible that the convention will disregard the states' mandate and propose rogue amendments instead.

First, the legacy approach to Article V faces the risk of Congress hijacking or sabotaging the amendment process by claiming the power to determine convention rules and logistics in its call on the front end. On the back end of the process, Congress could also set an unreasonably short sunset date for ratification referral. That risk is avoided by the currently drafted congressional resolution that is part of the Compact for a Balanced Budget.

The congressional resolution needed to activate the Compact for a Balanced Budget contemplates Congress calling the convention expressly "in accordance with the Compact," and further selects, in advance, legislative ratification for the contemplated amendment if it is proposed by the convention.[11] This creates an opportunity to secure congressional cooperation and implied consent to the Compact with the support of simple majorities of each House.*

But if Congress were nevertheless to refuse to call the convention in accordance with the Compact, and if the judiciary refused to intervene, every member state would be prohibited from attending the convention, which would deprive the convention of a quorum of states, as well as from ratifying anything it might attempt to generate without a quorum.[12] That prohibition on attendance and ratification would continue until the Congress yielded to the Compact or the Compact self-repealed on April 12, 2021, which would expressly render the entire amendment process void *ab initio*, which means "as if it never existed."[13] Thus, congressional interference with the Compact-organized amendment effort would function as a kill switch, preventing Congress from hijacking the amendment process.

Second, the Compact layers on numerous legal safeguards to keep the process on track and to function as additional kill switches in case of a rogue convention. It requires delegates from all member states to vote the Compact's limited agenda rules into place as the first order of business at the convention. It automatically forfeits the legal authority and disqualifies any rogue delegate or state. It bars all member states from attending a rogue convention or ratifying rogue amendments. Finally, the Compact declares all rogue actions of the convention and its participants void *ab initio*.[14]

Third, the Compact empowers every member state's attorney general to enforce the Compact against every other member state in the federal and state courts located in the Northern District of Texas, a centrally-located jurisdiction.[15] It thus imposes the legal obligation on one state to recognize the authority of another state's attorney general to enforce the obligation to hew to a limited convention agenda. By contrast, the legacy approach relies exclusively on the willingness of a given state to enforce its own laws, which may or may not instruct delegates to respect a limited convention agenda. If delegates go rogue at a legacy-organized Article V convention, other states have little recourse other than to rely on the state that sent the rogue delegates to enforce its own laws.

Fourth and finally, the Compact approach includes a "sunset" provision that automatically repeals the

* The Supreme Court ruled in *Hollingsworth v. Virginia* that Congress's role in the Article V amendment process does not implicate presidential presentment. *Hollingsworth v. Virginia* 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); *Special Constitutional Convention Study Committee, American Bar Association, Amendment of the Constitution by the Convention Method under Article V* 25 (1974). Although this ruling was applied specifically to the congressional proposal of amendments, there is reason to believe that Congress's convention call and ratification referral powers would be treated the same way, even if exercised by way of a resolution giving implied consent to an interstate compact. Simply put, the contemplated congressional resolution's exercise of Congress's Article V call and ratification referral power is similar in legal effect to the direct proposal of constitutional amendments. In both cases, Congress is merely channeling a legislative proposal for further action by other bodies — it is not, itself, making federal law of the sort that alters legal rights and obligations.

Compact in seven years from its original enactment date.[16] As a result, the Compact masses supermajority state support behind a specific, fully defined and known-in-advance political product. It does so in a period of time that is short enough to ensure that the political reputations that underpinned the Compact's passage are at stake in any decision to follow or abandon the terms of the Compact. This will create incentives for convention delegates to stick to the limited agenda of the Compact purely out of political self-preservation. This is especially the case if states retain the default setting of sending their sitting governor, who would have signed the Compact into law, to the convention as their sole delegate.

Taken together, the Compact clearly limits the activity at the convention it organizes to a straight up-or-down vote on the amendment it specifies. Rogue delegates and rogue actions would be identified and delegitimized for any deviation from the Compact's specified agenda.

Synergy

Some proponents of the legacy approach to Article V believe that the states are only eight or nine applications away from triggering the two-thirds convention call for a Balanced Budget Amendment convention.[17] One concern is that a state's legislative "bandwidth" would be wasted by adopting the Compact for a Balanced Budget when it has already applied for such a convention. The following explains how the Compact approach can work in conjunction with any other Article V effort already underway.

The Compact for a Balanced Budget is not redundant because it rolls up into one legislative action all of the state-enacted stages of the Article V process — including the appointment of delegates, the specification of convention rules and logistics, and the precommitment to ratifying a specified amendment. Therefore, the Compact requires less overall legislative bandwidth to achieve its ultimate goal of a ratified federal Balanced Budget Amendment than continuing with the legacy approach to Article V, *even in states that have already passed an application.* If legislative bandwidth is a concern, the Compact approach is the more legislatively efficient amendment vehicle.

But there is no need for a binary choice to be made between the legacy approach and the Compact approach to Article V, because the successful passage of the Compact works well together with any legacy effort already undertaken.

Each state that adopts the Compact pre-commits to ratifying the federal Balanced Budget Amendment it advances.[18] If a legacy approach somehow succeeded in convening a convention before the Compact approach did, then the passage of the Compact bill would immediately supply that convention with a vetted federal Balanced Budget Amendment that is not only ready to be proposed, but which is already ratified in numerous states. The Compact approach thus enhances the efficiency and value of legacy Article V efforts, even if the legacy approach were to organize a convention first.

Speed

The Compact approach can deliver a ratified amendment in as little as one session year. It transforms the amendment process into the rough equivalent of a ballot measure voted on by simple majorities of Congress and supermajorities of governors and state legislatures. Originating an amendment from the states becomes achievable in short order with adequate resources.

As discussed previously, the Compact approach works by consolidating into one interstate agreement all the legislative steps that are needed for states to use Article V to amend the U.S. Constitution. It also consolidates into one congressional resolution (a "concurrent resolution") all the legislative steps that Congress controls in the process (the convention call and the selection of mode of ratification). Once these actions are

completed, the only thing left is for the convention to meet and vote up or down the specific amendment contemplated in the compact and resolution.

The Compact approach achieves in three legislative stages and 39 total legislative actions (38 state laws plus on congressional resolution) what would otherwise take at least six legislative stages and over 100 total legislative actions using the legacy approach.

Conclusion

Taken together, the Compact approach to Article V has the unique advantages of certainty, safety, synergy and speed compared to the legacy approach. Combined, these advantages make it the most plausible vehicle for constitutional reform derived from the collective action of the states. Because of its streamlined and consolidated nature, the Compact for a Balanced Budget is closer to generating a ratified Balanced Budget Amendment than any other effort.

Four states have already adopted the Compact for a Balanced Budget, meaning that it is only 34 state enactments, one congressional resolution, and one 24-hour convention away from achieving a ratified amendment to the U.S. Constitution. In fact, it is twice as far along as the various legacy approaches underway, because they require at least 68 more state enactments, two congressional resolutions and one convention to achieve a ratified amendment (the nature of which is currently unknown).

History shows the plausibility of surmounting the thresholds needed for the Compact approach to generate a limited-government constitutional amendment. The National Center for Interstate Compacts maintained by the Council of State Governments lists existing interstate compacts in every state. Thirty-eight states have joined an interstate compact at least seven times before.[19] Simple majorities of Congress have repeatedly voted in favor of a Balanced Budget Amendment proposal on the floor, only failing to reach the two-thirds threshold required for a congressionally proposed amendment.[20] By contrast, so far, no legacy "convention of the states" approach to Article V has resulted in an amendment in over 227 years.

With the national debt rocketing to $20 trillion and beyond, baby-boomers retiring en masse, and the present value of unfunded entitlement programs enabled by the federal government's unlimited borrowing capacity estimated as high as $210 trillion, Michigan, and other states, should give full consideration to the Compact for a Balanced Budget.[21]

Appendix A: The Balanced Budget Amendment and Analysis*

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

For example, if there is $20 trillion in outstanding federal debt on ratification of the amendment, the federal government will have a revolving line of credit limited to $21 trillion. The extra $1 trillion (5 percent of $20 trillion) allows for a debt cushion to handle cash flow volatility and current borrowing rates for one to two years.

Congress, preparing for the impending ratification of the amendment, may sell enough bonds to set the initial debt limit high enough upon ratification to allow for a longer-term budget to be implemented. For instance, Congress could agree to a 10- to 70-year plan for reaching a balanced budget. Congress could add various measures to the proposed budget to make it credible and durable enough for the bonding market to absorb an otherwise extremely large issuance of bonding to carry the entire plan into effect.

By the time the amendment was ratified, the initial debt limit would be fixed at 105 percent of whatever bonding had been sold at that point, which would then simply give new credibility to that budget plan by constitutionally limiting borrowing capacity to the sum total of bonds previously issued to implement that plan plus a 5 percent cushion to allow for unforeseen contingencies. There may never be a need for further borrowing capacity under this scenario.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

This section provides:

- States a seat at the table in determining national debt policy.
- Flexibility for national emergencies and to accommodate reasonable plans for more debt, such as what might be developed during the one- to two-year transitional phase allowed by the initial debt limit.
- State legislators the ability to judge the wisdom of borrowing beyond the debt limit. These policymakers are familiar with budgeting and state debt limits, closer to the American people and have no control over the underlying federal appropriations. National debt policy judgments will thereby become more impartial, more resistant to special interest influence, and more transparent as the public policy debate occurs in 50 state capitols.

* Italicized text is the model language.

- Restoration of a small portion of the power the states once held to check and balance Washington before the 17th Amendment removed them from a position of control over the U.S. Senate. Washington will have a new incentive to respect the states and to restrain the abuse of debt. At the same time, to prevent corruption and the abuse of the referendum process, any proposal to increase the debt must be an unconditional, single-subject measure, which is free from taxing or spending quid pro quos, or it will not be legally effective.

States will begin preparation for their new role in anticipation of the ratification of the amendment and can adopt state law measures to streamline approval, perhaps even adopting automatic approval of new borrowing measures if certain emergency criteria are met (or perhaps automatic disapproval of new borrowing measures that are referred without an underlying budget plan).

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

The President or Congress are required to enforce the debt limit by designating necessary spending delays when a red zone (98 percent of the debt limit) is reached. For instance, if the debt limit were $21 trillion, the impoundment requirement would be triggered at $20.58 trillion, which would be roughly 10 months before hitting the debt limit at current borrowing rates.

The provision prevents impoundments from being abused by the President (as they usually are during debt ceiling debates) by giving Congress a simple majority override (no presidential signature required). It also forces transparency on spending priorities and trade-offs long before the debt limit runs out, which is the starting point for real budget negotiations.

If neither the President nor Congress acts, spending will be limited to tax cash flow (per Section 1) when the debt limit is reached. Illegal debt is deemed void, which is the ultimate enforcement mechanism against violating the debt limit. This is because bond markets usually will not purchase void bonds.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

This provision keeps all fiscal options on the table, but the provision will cause spending reductions to look relatively more attractive as an initial means of closing deficits. It requires a supermajority for new or increased income or sales taxes, while preserving the current rule of simple majority approval for new or increased taxes arising from: 1) the replacement of all income taxes with a non-VAT sales tax; 2) the elimination of tax loopholes; and 3) new or increased revenue measures that are not subject to the supermajority approval requirement, such as tariffs and user fees. These tax limits protect current generations from being sacrificed to future generations, just as the debt limit protects future generations from being sacrificed to current generations.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

These definitions maximize transparency and eliminate or strongly deter all known tactics used to circumvent constitutional debt limits. Abusive monetary policy, exotic borrowing vehicles, or financial games are prohibited or strongly deterred because total spending by every federal entity is limited by these definitions to cash-on-hand originating from taxes and other income (excluding proceeds from raiding trust funds or printing money) and full faith and credit borrowing.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

This section ensures the amendment is effective as soon as it is ratified. It also allows Congress to fill any necessary procedural gaps, such as new Treasury Department budgetary controls, that will be necessary to enforce the amendment. For instance, Congress could pass a law requiring the Treasury to set aside a portion of the federal government's authorized borrowing capacity specifically for designated national emergencies or to handle cash-flow volatility, and then parcel out portions of that reserved borrowing capacity to agencies to help them manage the new "pay as you go" limit on spending.

Appendix B: Research on the Original Meaning of Article V

Recent research justifies the conclusion that the Founders regarded the Article V convention to be an instrument of the states to propose specific amendments in the "Application" that triggers the convention call.* The notion that an Article V convention would ordinarily be an autonomous sovereign body free to draft any amendment it wished is inconsistent with this evidence.

The Compact for a Balanced Budget and its activating congressional resolution are the practical means to ensure the Founders' vision for Article V is actually enforced. The Compact approach to Article V ensures all legal and political disputes are settled before the untested process of convening a convention is initiated.

A key piece of evidence concerning the Founder's intent is the next-to-final draft of Article V and the edits made to it to produce the final draft. This is available in the Records of the Federal Convention of 1787. The next-to-final draft of Article V placed the power to propose amendments in the *hands of Congress* on "application" of the state legislatures.[22] Because this mode of amending the Constitution was meant to allow the states to propose the amendments they desired, it is clear that Congress was not supposed to draft the amendments. (Congress already had the parallel power to draft and propose amendments by a two-thirds vote of each house.)

Thus, the only source of the amendments that Congress could propose under this next-to-final formulation of Article V would have been applications that the states advanced. Of course, the final draft of Article V replaced Congress with a "Convention for proposing amendments" as the proposing body; but nothing in the Records of the Federal Convention of 1787 suggests that the Founders meant for the application to stop furnishing the text of desired amendments.[23]

In fact, applications were a common way of petitioning Congress for specific relief of all kinds during the Founding era.[24] There is nothing in this custom and usage to suggest that the application for an Article V convention could not also propose specific relief in the form of one or more amendments to be placed before a convention. It would be odd to suggest that the Founders intended to deviate from this common and contemporaneous understanding of the nature and power of an application to Congress.

Taken together, this evidence of the drafting history and public understanding of application at the time of the founding supports the conclusion that the states retained the ability to specify amendments in their application (as in the next-to-final version of Article V), notwithstanding the replacement of Congress with a convention as the proposing body triggered by that application.

Consider additional evidence:

- During the ratification debates over the Constitution, Tench Coxe said, "If two thirds of those legislatures require it, Congress *must* call a general convention, even though they dislike the proposed amendments, and if three fourths of the state legislatures or conventions approve such proposed amendments, they become *an actual and binding part of the constitution*, without any possible interference of Congress" [emphasis in the original]. Coxe further explained,

* For similar research and analysis, see: Michael B. Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," *Constitutional Commentary* 81 (Apr. 6, 2012): 53, http://perma.cc/5YSM-M8HZ; Michael L. Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," *Tennessee Law Review* 78, no. 3 (Aug. 3, 2011), http://perma.cc/D4L7-3ZS8; James Kenneth Rogers, "The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process," *Harvard Journal of Law & Public Policy* 30, no. 3 (2007), http://perma.cc/Z5VQ-93PX.

"Three fourths of the states concurring will ensure *any amendments*, after the adoption of nine or more" [emphasis in the original].[25]

- Writing in Federalist No. 43, James Madison says the power of the states to originate amendments is equal to that of Congress.[26] This could only be true if the Article V application specified amendments and if the Article V convention were an instrumentality of the states in proposing the specified amendments.
- Writing in Federalist No. 85, Alexander Hamilton emphasizes how two-thirds of the states (then "nine") would seek "alterations" and "set on foot the measure" and that the people could rely on "State legislatures to erect barriers against the encroachments of the national authority."[27] Obviously, an amendment is the "alteration" or "measure" of which Hamilton writes. This confirms the amendment-specifying power of an Article V application, which alone is entirely controlled by two-thirds of the states through their legislatures.
- Writing to John Armstrong on April 25, 1788, George Washington says "nine states" can get the amendments they desire, yet again in reference to the two-thirds threshold for calling an Article V convention.[28]
- In a statement to the Virginia convention on June 16, 1788, George Nicholas wrote that state legislatures would apply for an Article V convention confined to a "few points;" and that "it is natural to conclude that those States who will apply for calling the convention will concur in the ratification of the proposed amendments."[29] Nicholas's conclusion is only "natural" on the assumption that the states would typically organize a convention after first agreeing on the amendments, presumably specified in their Article V application.
- In a 1799 report on the Virginia resolutions concerning the Alien and Sedition laws, James Madison observed that the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional. Specifically, after highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose," Madison wrote that states could ask their senators to propose an "explanatory amendment" to clarify that the Alien and Sedition Acts were unconstitutional, and that two-thirds of state legislatures "might, by an application to Congress, have obtained a Convention for the same object."[30] Again, the application is the stated source of the desired amendment.

The bottom line is that those Founders who addressed the issue assumed or represented the view that the states' Article V "application" would advance the specific amendments desired by the states for proposal by the Article V convention. This is consistent with the conclusion that the Article V application used to trigger the convention call would ordinarily include the text of one or more desired amendments, and the convention would have the instrumental role of ensuring the desired amendment or amendment were actually proposed. To this author's knowledge, there is no evidence suggesting otherwise, despite frequent recurrence by Article V opponents to the letter written by James Madison to George Lee Turberville on Nov. 2, 1788.*

* Madison's letter to Turberville does not oppose the targeted use of Article V for one or more amendments specified in advance by the states in their Article V application. Madison was clear in Federalist No. 43 and in his Report on the Virginia Resolutions that he expected the Article V convention to be targeted to specific amendments by the states. The Turberville letter establishes only that Madison opposed efforts by New York to organize a convention that could draft virtually anything it wanted. J.C.A. Stagg, ed., *The Papers of James Madison Digital Edition* (Charlottesville: University of Virginia Press, 2010), 330–332, http://perma.cc/L3QG-ZHNB.

In fact, the idea that a "convention" necessarily has autonomous sovereign drafting power is inconsistent with 18th-century usage. The word "convention" was used as a synonym for an assembly. You can see this by reviewing the term in 18th century dictionaries.[31] Given such usage, the original intent of Article V was not necessarily to give the convention exclusive amendment drafting power.

As to the claim that there would be no need for a proposing convention if it did not possess autonomous drafting powers, or that a proposing convention must necessarily have more deliberative authority than a ratifying convention, this argument is specious. The proposing convention was made necessary by the limitations of 18th century technology. There was no modern instantaneous communication. Some coordinated means of ensuring that the amendment specified in the application would actually be proposed had to exist. It is perfectly sensible that a proposing convention was introduced into the language of Article V simply to ensure the necessary coordination occurred among the states, represented by their agents (delegates) at the convention, so that what was proposed actually was what the states asked-for in their application.

Indeed, that is the entire reason why the next-to-final version of Article V, which had Congress proposing amendments on application of the states, was replaced with a "convention for proposing amendments." Most of the Founders, and especially George Mason, did not trust Congress to propose the amendment or amendments that would otherwise have been advanced in the states' application under the next-to-final formulation.

Endnotes

1 U.S. Const. art. V; For example, see Emma Roller and David Weigel, "Give Me Amendments or Give Me Death" (Slate, Dec. 10, 2013), http://perma.cc/T7RV-JGUU.

2 Jonathan Oosting, "Michigan Petitions Congress for Federal Balanced Budget Amendment, Constitutional Convention," *MLive.com*, March 26, 2014, http://perma.cc/S3XJ-TKG7.

3 Jonathan Oosting, "Michigan Gov. Rick Snyder Vetoes Delegate Plan for Constitutional Convention," *MLive.com*, Dec. 29, 2014, http://perma.cc/2V3C-7U4A.

4 For example, "House Bill 1109 of 2015" (State of Texas, Feb. 3, 2015), art. V, http://perma.cc/9T4C-P9YM.

5 Ibid., Art. VI.

6 Ibid., Art. II, sec. 7; Art. VII, sec. 2.

7 Ibid., Art. II, sec. 7; Art. VII, sec. 1.

8 Ibid., Art. IV, VII, X.

9 Ibid., Art. IX.

10 "The Compact for a Balanced Budget Commission Public Record," 2015, http://perma.cc/N9EK-NPF7.

11 "H. Con. Res. 26: Effectuating the Compact for a Balanced Budget" (U.S. House of Representatives, March 19, 2015), sec. 102, http://perma.cc/24LR-77EB.

12 "House Bill 1109 of 2015" (State of Texas, Feb. 3, 2015), Art. VIII, sec. 1-2, http://perma.cc/9T4C-P9YM.

13 Ibid., Art. X, sec. 5, 7.

14 Ibid., Art. VI, sec. 6-10; Art. VIII, sec. 2.

15 Ibid., Art. X, sec. 4.

16 Ibid., Art. X, sec. 7.

17 For example, see: "The Balanced Budget Amendment in the States: Road Map to Ratification" (Balanced Budget Amendment Task Force, 2015), http://perma.cc/C83D-QRDV.

18 "House Bill 1109 of 2015" (State of Texas, Feb. 3, 2015), Art. IX, http://perma.cc/9T4C-P9YM.

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Why Michigan Should Compact for a Federal Balanced Budget Amendment

By Nick Dranias

Introduction

Article V of the U.S. Constitution requires Congress to call a convention for proposing amendments "on the Application of the Legislatures of two thirds of the several States."[1] Gov. Rick Snyder and the Michigan Legislature have expressed interest in using this state-led mechanism to require Congress to balance the federal budget and passed a resolution calling for such a constitutional amendment in 2014.[2]

The problem is that the states have never successfully used Article V to amend the Constitution since they ratified it 227 years ago. One reason for this is that the process of using Article V, as it has been traditionally envisioned, requires numerous legislative and congressional actions — all of which could derail the effort. For example, Gov. Snyder and the Legislature could not agree on the next legislative step — the appointment of delegates to the convention — and Michigan's attempt to amend the U.S. Constitution via Article V has stopped dead in its tracks.[3]

As the Michigan example demonstrates, amending the Constitution via a state-initiated convention is by no means a quick or certain means of obtaining redress for constitutional problems. The passage of an Article V application by an individual state is just the first step in a long series of contingent legislative steps towards successfully generating an amendment. These steps raise many questions:

- Can substantively different applications from individual states be aggregated?
- Will Congress fulfill its constitutional duty to call the convention?
- Will Congress stand back, as it should, and allow the applying states to conduct the convention by their own standards?
- Can one state effectively enforce a limited convention agenda against another state?
- Will the convention ever actually generate an amendment?
- Will the convention ever adjourn?
- Will the amendment be good public policy?
- Will Congress sabotage the ratification process?
- Will 38 states ratify the amendment?

These questions illustrate that the "legacy approach" to amending the Constitution via Article V involves a large legislative investment towards a speculative result. Fortunately, there is an alternative: the "Compact approach" to using Article V.

The Compact for a Balanced Budget is an example of such an approach. It is a formal interstate agreement that advances, proposes and ratifies a federal Balanced Budget Amendment in one bill — a single legislative

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action — passed by 38 state legislatures. The Compact commits these states (three-quarters of the total, which is the amount needed for ratification) to the entire constitutional amendment process in advance, so that a specific, pre-drafted federal Balanced Budget Amendment is voted up or down within 24 hours at the convention it organizes. The convention is set in motion by a single congressional resolution, passed with simple majorities and with no presidential signature, which both calls the 24-hour convention and selects legislative ratification in advance.

Additionally, recent research shows that the Founders meant for the Article V convention to be used by the states to propose specific constitutional amendments.* By targeting an Article V convention and securing ratification of its proposed amendments by three-fourths of the states, state legislatures could conceivably remedy the entire spectrum of perceived federal error, abuse, overreach and incompetence.

The Compact approach is truly "Article V 2.0." This paper will describe the four main advantages of using the Compact approach to pass a federal Balanced Budget Amendment via Article V. These advantages are 1) certainty, 2) safety, 3) synergy and 4) speed.

Certainty

All efforts to originate constitutional amendments from the states require the organization of a convention for proposing amendments under Article V of the U.S. Constitution. The Compact for a Balanced Budget ensures that states know precisely how the convention will operate and what the convention will produce before it is called.

The necessary agreement among the states (the actual "Compact") and the compact-activating congressional resolution predetermine all of the following:

- The application to Congress[4]
- The identity and exact instruction of the convention delegates[5]
- The convention agenda[6]
- A pre-commitment to considering the proposal of a specific federal Balanced Budget Amendment and no other amendment[7]
- The convention rules and logistics[8]
- A pre-commitment to ratifying the contemplated Balanced Budget Amendment if it is proposed[9]

The most important of these elements is the pre-commitment to a specific federal Balanced Budget Amendment. Unlike the legacy approach, the Compact allows legislators to read, assess and vet the only amendment that will be proposed at the convention — instead of delegating this authority to a body of yet-to-be-determined delegates.

Appendix A includes a detailed sectional analysis of the amendment advanced by the Compact for a Balanced Budget. The Compact approach to Article V is backed by recent research on the original interpretation of the U.S. Constitution (discussed in Appendix B). That research shows that the Article V application was originally meant to advance the specific text of one or more amendments to be proposed by the convention.

The Compact for a Balanced Budget also maintains a reasonable degree of certainty by organizing a commission to oversee the amendment process, enforce the Compact, manage logistics and confer with Congress and other states to keep everything on track. In fact, the Compact for a Balanced Budget Commission is already up and running.[10] The only question left open by the Compact is whether the convention it organizes will propose the contemplated federal Balanced Budget Amendment.

* See "Appendix B: Research on the Original Meaning of Article V."

Safety

A Compact approach to Article V allows for four political and legal safeguards, which, in combination with the ratification requirement for any proposed amendment, makes it implausible that the convention will disregard the states' mandate and propose rogue amendments instead.

First, the legacy approach to Article V faces the risk of Congress hijacking or sabotaging the amendment process by claiming the power to determine convention rules and logistics in its call on the front end. On the back end of the process, Congress could also set an unreasonably short sunset date for ratification referral. That risk is avoided by the currently drafted congressional resolution that is part of the Compact for a Balanced Budget.

The congressional resolution needed to activate the Compact for a Balanced Budget contemplates Congress calling the convention expressly "in accordance with the Compact," and further selects, in advance, legislative ratification for the contemplated amendment if it is proposed by the convention.[11] This creates an opportunity to secure congressional cooperation and implied consent to the Compact with the support of simple majorities of each House.*

But if Congress were nevertheless to refuse to call the convention in accordance with the Compact, and if the judiciary refused to intervene, every member state would be prohibited from attending the convention, which would deprive the convention of a quorum of states, as well as from ratifying anything it might attempt to generate without a quorum.[12] That prohibition on attendance and ratification would continue until the Congress yielded to the Compact or the Compact self-repealed on April 12, 2021, which would expressly render the entire amendment process void *ab initio*, which means "as if it never existed."[13] Thus, congressional interference with the Compact-organized amendment effort would function as a kill switch, preventing Congress from hijacking the amendment process.

Second, the Compact layers on numerous legal safeguards to keep the process on track and to function as additional kill switches in case of a rogue convention. It requires delegates from all member states to vote the Compact's limited agenda rules into place as the first order of business at the convention. It automatically forfeits the legal authority and disqualifies any rogue delegate or state. It bars all member states from attending a rogue convention or ratifying rogue amendments. Finally, the Compact declares all rogue actions of the convention and its participants void *ab initio*.[14]

Third, the Compact empowers every member state's attorney general to enforce the Compact against every other member state in the federal and state courts located in the Northern District of Texas, a centrally-located jurisdiction.[15] It thus imposes the legal obligation on one state to recognize the authority of another state's attorney general to enforce the obligation to hew to a limited convention agenda. By contrast, the legacy approach relies exclusively on the willingness of a given state to enforce its own laws, which may or may not instruct delegates to respect a limited convention agenda. If delegates go rogue at a legacy-organized Article V convention, other states have little recourse other than to rely on the state that sent the rogue delegates to enforce its own laws.

Fourth and finally, the Compact approach includes a "sunset" provision that automatically repeals the

* The Supreme Court ruled in *Hollingsworth v. Virginia* that Congress's role in the Article V amendment process does not implicate presidential presentment. *Hollingsworth v. Virginia* 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); *Special Constitutional Convention Study Committee, American Bar Association. Amendment of the Constitution by the Convention Method under Article V* 25 (1974). Although this ruling was applied specifically to the congressional proposal of amendments, there is reason to believe that Congress's convention call and ratification referral powers would be treated the same way, even if exercised by way of a resolution giving implied consent to an interstate compact. Simply put, the contemplated congressional resolution's exercise of Congress's Article V call and ratification referral power is similar in legal effect to the direct proposal of constitutional amendments. In both cases, Congress is merely channeling a legislative proposal for further action by other bodies — it is not, itself, making federal law of the sort that alters legal rights and obligations.

Compact in seven years from its original enactment date.[16] As a result, the Compact masses supermajority state support behind a specific, fully defined and known-in-advance political product. It does so in a period of time that is short enough to ensure that the political reputations that underpinned the Compact's passage are at stake in any decision to follow or abandon the terms of the Compact. This will create incentives for convention delegates to stick to the limited agenda of the Compact purely out of political self-preservation. This is especially the case if states retain the default setting of sending their sitting governor, who would have signed the Compact into law, to the convention as their sole delegate.

Taken together, the Compact clearly limits the activity at the convention it organizes to a straight up-or-down vote on the amendment it specifies. Rogue delegates and rogue actions would be identified and delegitimized for any deviation from the Compact's specified agenda.

Synergy

Some proponents of the legacy approach to Article V believe that the states are only eight or nine applications away from triggering the two-thirds convention call for a Balanced Budget Amendment convention.[17] One concern is that a state's legislative "bandwidth" would be wasted by adopting the Compact for a Balanced Budget when it has already applied for such a convention. The following explains how the Compact approach can work in conjunction with any other Article V effort already underway.

The Compact for a Balanced Budget is not redundant because it rolls up into one legislative action all of the state-enacted stages of the Article V process — including the appointment of delegates, the specification of convention rules and logistics, and the precommitment to ratifying a specified amendment. Therefore, the Compact requires less overall legislative bandwidth to achieve its ultimate goal of a ratified federal Balanced Budget Amendment than continuing with the legacy approach to Article V, *even in states that have already passed an application.* If legislative bandwidth is a concern, the Compact approach is the more legislatively efficient amendment vehicle.

But there is no need for a binary choice to be made between the legacy approach and the Compact approach to Article V, because the successful passage of the Compact works well together with any legacy effort already undertaken.

Each state that adopts the Compact pre-commits to ratifying the federal Balanced Budget Amendment it advances.[18] If a legacy approach somehow succeeded in convening a convention before the Compact approach did, then the passage of the Compact bill would immediately supply that convention with a vetted federal Balanced Budget Amendment that is not only ready to be proposed, but which is already ratified in numerous states. The Compact approach thus enhances the efficiency and value of legacy Article V efforts, even if the legacy approach were to organize a convention first.

Speed

The Compact approach can deliver a ratified amendment in as little as one session year. It transforms the amendment process into the rough equivalent of a ballot measure voted on by simple majorities of Congress and supermajorities of governors and state legislatures. Originating an amendment from the states becomes achievable in short order with adequate resources.

As discussed previously, the Compact approach works by consolidating into one interstate agreement all the legislative steps that are needed for states to use Article V to amend the U.S. Constitution. It also consolidates into one congressional resolution (a "concurrent resolution") all the legislative steps that Congress controls in the process (the convention call and the selection of mode of ratification). Once these actions are

completed, the only thing left is for the convention to meet and vote up or down the specific amendment contemplated in the compact and resolution.

The Compact approach achieves in three legislative stages and 39 total legislative actions (38 state laws plus on congressional resolution) what would otherwise take at least six legislative stages and over 100 total legislative actions using the legacy approach.

Conclusion

Taken together, the Compact approach to Article V has the unique advantages of certainty, safety, synergy and speed compared to the legacy approach. Combined, these advantages make it the most plausible vehicle for constitutional reform derived from the collective action of the states. Because of its streamlined and consolidated nature, the Compact for a Balanced Budget is closer to generating a ratified Balanced Budget Amendment than any other effort.

Four states have already adopted the Compact for a Balanced Budget, meaning that it is only 34 state enactments, one congressional resolution, and one 24-hour convention away from achieving a ratified amendment to the U.S. Constitution. In fact, it is twice as far along as the various legacy approaches underway, because they require at least 68 more state enactments, two congressional resolutions and one convention to achieve a ratified amendment (the nature of which is currently unknown).

History shows the plausibility of surmounting the thresholds needed for the Compact approach to generate a limited-government constitutional amendment. The National Center for Interstate Compacts maintained by the Council of State Governments lists existing interstate compacts in every state. Thirty-eight states have joined an interstate compact at least seven times before.[19] Simple majorities of Congress have repeatedly voted in favor of a Balanced Budget Amendment proposal on the floor, only failing to reach the two-thirds threshold required for a congressionally proposed amendment.[20] By contrast, so far, no legacy "convention of the states" approach to Article V has resulted in an amendment in over 227 years.

With the national debt rocketing to $20 trillion and beyond, baby-boomers retiring en masse, and the present value of unfunded entitlement programs enabled by the federal government's unlimited borrowing capacity estimated as high as $210 trillion, Michigan, and other states, should give full consideration to the Compact for a Balanced Budget.[21]

Appendix A: The Balanced Budget Amendment and Analysis*

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

For example, if there is $20 trillion in outstanding federal debt on ratification of the amendment, the federal government will have a revolving line of credit limited to $21 trillion. The extra $1 trillion (5 percent of $20 trillion) allows for a debt cushion to handle cash flow volatility and current borrowing rates for one to two years.

Congress, preparing for the impending ratification of the amendment, may sell enough bonds to set the initial debt limit high enough upon ratification to allow for a longer-term budget to be implemented. For instance, Congress could agree to a 10- to 70-year plan for reaching a balanced budget. Congress could add various measures to the proposed budget to make it credible and durable enough for the bonding market to absorb an otherwise extremely large issuance of bonding to carry the entire plan into effect.

By the time the amendment was ratified, the initial debt limit would be fixed at 105 percent of whatever bonding had been sold at that point, which would then simply give new credibility to that budget plan by constitutionally limiting borrowing capacity to the sum total of bonds previously issued to implement that plan plus a 5 percent cushion to allow for unforeseen contingencies. There may never be a need for further borrowing capacity under this scenario.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

This section provides:

- States a seat at the table in determining national debt policy.
- Flexibility for national emergencies and to accommodate reasonable plans for more debt, such as what might be developed during the one- to two-year transitional phase allowed by the initial debt limit.
- State legislators the ability to judge the wisdom of borrowing beyond the debt limit. These policymakers are familiar with budgeting and state debt limits, closer to the American people and have no control over the underlying federal appropriations. National debt policy judgments will thereby become more impartial, more resistant to special interest influence, and more transparent as the public policy debate occurs in 50 state capitols.

* Italicized text is the model language.

- Restoration of a small portion of the power the states once held to check and balance Washington before the 17th Amendment removed them from a position of control over the U.S. Senate. Washington will have a new incentive to respect the states and to restrain the abuse of debt. At the same time, to prevent corruption and the abuse of the referendum process, any proposal to increase the debt must be an unconditional, single-subject measure, which is free from taxing or spending quid pro quos, or it will not be legally effective.

States will begin preparation for their new role in anticipation of the ratification of the amendment and can adopt state law measures to streamline approval, perhaps even adopting automatic approval of new borrowing measures if certain emergency criteria are met (or perhaps automatic disapproval of new borrowing measures that are referred without an underlying budget plan).

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

The President or Congress are required to enforce the debt limit by designating necessary spending delays when a red zone (98 percent of the debt limit) is reached. For instance, if the debt limit were $21 trillion, the impoundment requirement would be triggered at $20.58 trillion, which would be roughly 10 months before hitting the debt limit at current borrowing rates.

The provision prevents impoundments from being abused by the President (as they usually are during debt ceiling debates) by giving Congress a simple majority override (no presidential signature required). It also forces transparency on spending priorities and trade-offs long before the debt limit runs out, which is the starting point for real budget negotiations.

If neither the President nor Congress acts, spending will be limited to tax cash flow (per Section 1) when the debt limit is reached. Illegal debt is deemed void, which is the ultimate enforcement mechanism against violating the debt limit. This is because bond markets usually will not purchase void bonds.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

This provision keeps all fiscal options on the table, but the provision will cause spending reductions to look relatively more attractive as an initial means of closing deficits. It requires a supermajority for new or increased income or sales taxes, while preserving the current rule of simple majority approval for new or increased taxes arising from: 1) the replacement of all income taxes with a non-VAT sales tax; 2) the elimination of tax loopholes; and 3) new or increased revenue measures that are not subject to the supermajority approval requirement, such as tariffs and user fees. These tax limits protect current generations from being sacrificed to future generations, just as the debt limit protects future generations from being sacrificed to current generations.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

These definitions maximize transparency and eliminate or strongly deter all known tactics used to circumvent constitutional debt limits. Abusive monetary policy, exotic borrowing vehicles, or financial games are prohibited or strongly deterred because total spending by every federal entity is limited by these definitions to cash-on-hand originating from taxes and other income (excluding proceeds from raiding trust funds or printing money) and full faith and credit borrowing.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

This section ensures the amendment is effective as soon as it is ratified. It also allows Congress to fill any necessary procedural gaps, such as new Treasury Department budgetary controls, that will be necessary to enforce the amendment. For instance, Congress could pass a law requiring the Treasury to set aside a portion of the federal government's authorized borrowing capacity specifically for designated national emergencies or to handle cash-flow volatility, and then parcel out portions of that reserved borrowing capacity to agencies to help them manage the new "pay as you go" limit on spending.

Appendix B: Research on the Original Meaning of Article V

Recent research justifies the conclusion that the Founders regarded the Article V convention to be an instrument of the states to propose specific amendments in the "Application" that triggers the convention call.* The notion that an Article V convention would ordinarily be an autonomous sovereign body free to draft any amendment it wished is inconsistent with this evidence.

The Compact for a Balanced Budget and its activating congressional resolution are the practical means to ensure the Founders' vision for Article V is actually enforced. The Compact approach to Article V ensures all legal and political disputes are settled before the untested process of convening a convention is initiated.

A key piece of evidence concerning the Founder's intent is the next-to-final draft of Article V and the edits made to it to produce the final draft. This is available in the Records of the Federal Convention of 1787. The next-to-final draft of Article V placed the power to propose amendments in the *hands of Congress* on "application" of the state legislatures.[22] Because this mode of amending the Constitution was meant to allow the states to propose the amendments they desired, it is clear that Congress was not supposed to draft the amendments. (Congress already had the parallel power to draft and propose amendments by a two-thirds vote of each house.)

Thus, the only source of the amendments that Congress could propose under this next-to-final formulation of Article V would have been applications that the states advanced. Of course, the final draft of Article V replaced Congress with a "Convention for proposing amendments" as the proposing body; but nothing in the Records of the Federal Convention of 1787 suggests that the Founders meant for the application to stop furnishing the text of desired amendments.[23]

In fact, applications were a common way of petitioning Congress for specific relief of all kinds during the Founding era.[24] There is nothing in this custom and usage to suggest that the application for an Article V convention could not also propose specific relief in the form of one or more amendments to be placed before a convention. It would be odd to suggest that the Founders intended to deviate from this common and contemporaneous understanding of the nature and power of an application to Congress.

Taken together, this evidence of the drafting history and public understanding of application at the time of the founding supports the conclusion that the states retained the ability to specify amendments in their application (as in the next-to-final version of Article V), notwithstanding the replacement of Congress with a convention as the proposing body triggered by that application.

Consider additional evidence:

- During the ratification debates over the Constitution, Tench Coxe said, "If two thirds of those legislatures require it, Congress *must* call a general convention, even though they dislike the proposed amendments, and if three fourths of the state legislatures or conventions approve such proposed amendments, they become *an actual and binding part of the constitution*, without any possible interference of Congress" [emphasis in the original]. Coxe further explained,

* For similar research and analysis, see: Michael B. Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," *Constitutional Commentary* 81 (Apr. 6, 2012): 53, http://perma.cc/5YSM-M8HZ; Michael L. Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," *Tennessee Law Review* 78, no. 3 (Aug. 3, 2011), http://perma.cc/D4L7-3ZS8; James Kenneth Rogers, "The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process," *Harvard Journal of Law & Public Policy* 30, no. 3 (2007), http://perma.cc/Z5VQ-93PX.

"Three fourths of the states concurring will ensure *any amendments*, after the adoption of nine or more" [emphasis in the original].[25]

- Writing in Federalist No. 43, James Madison says the power of the states to originate amendments is equal to that of Congress.[26] This could only be true if the Article V application specified amendments and if the Article V convention were an instrumentality of the states in proposing the specified amendments.
- Writing in Federalist No. 85, Alexander Hamilton emphasizes how two-thirds of the states (then "nine") would seek "alterations" and "set on foot the measure" and that the people could rely on "State legislatures to erect barriers against the encroachments of the national authority."[27] Obviously, an amendment is the "alteration" or "measure" of which Hamilton writes. This confirms the amendment-specifying power of an Article V application, which alone is entirely controlled by two-thirds of the states through their legislatures.
- Writing to John Armstrong on April 25, 1788, George Washington says "nine states" can get the amendments they desire, yet again in reference to the two-thirds threshold for calling an Article V convention.[28]
- In a statement to the Virginia convention on June 16, 1788, George Nicholas wrote that state legislatures would apply for an Article V convention confined to a "few points;" and that "it is natural to conclude that those States who will apply for calling the convention will concur in the ratification of the proposed amendments."[29] Nicholas's conclusion is only "natural" on the assumption that the states would typically organize a convention after first agreeing on the amendments, presumably specified in their Article V application.
- In a 1799 report on the Virginia resolutions concerning the Alien and Sedition laws, James Madison observed that the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional. Specifically, after highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose," Madison wrote that states could ask their senators to propose an "explanatory amendment" to clarify that the Alien and Sedition Acts were unconstitutional, and that two-thirds of state legislatures "might, by an application to Congress, have obtained a Convention for the same object."[30] Again, the application is the stated source of the desired amendment.

The bottom line is that those Founders who addressed the issue assumed or represented the view that the states' Article V "application" would advance the specific amendments desired by the states for proposal by the Article V convention. This is consistent with the conclusion that the Article V application used to trigger the convention call would ordinarily include the text of one or more desired amendments, and the convention would have the instrumental role of ensuring the desired amendment or amendment were actually proposed. To this author's knowledge, there is no evidence suggesting otherwise, despite frequent recurrence by Article V opponents to the letter written by James Madison to George Lee Turberville on Nov. 2, 1788.*

* Madison's letter to Turberville does not oppose the targeted use of Article V for one or more amendments specified in advance by the states in their Article V application. Madison was clear in Federalist No. 43 and in his Report on the Virginia Resolutions that he expected the Article V convention to be targeted to specific amendments by the states. The Turberville letter establishes only that Madison opposed efforts by New York to organize a convention that could draft virtually anything it wanted. J.C.A. Stagg, ed., *The Papers of James Madison Digital Edition* (Charlottesville: University of Virginia Press, 2010), 330–332, http://perma.cc/L3QG-ZHNB.

In fact, the idea that a "convention" necessarily has autonomous sovereign drafting power is inconsistent with 18th-century usage. The word "convention" was used as a synonym for an assembly. You can see this by reviewing the term in 18th century dictionaries.[31] Given such usage, the original intent of Article V was not necessarily to give the convention exclusive amendment drafting power.

As to the claim that there would be no need for a proposing convention if it did not possess autonomous drafting powers, or that a proposing convention must necessarily have more deliberative authority than a ratifying convention, this argument is specious. The proposing convention was made necessary by the limitations of 18th century technology. There was no modern instantaneous communication. Some coordinated means of ensuring that the amendment specified in the application would actually be proposed had to exist. It is perfectly sensible that a proposing convention was introduced into the language of Article V simply to ensure the necessary coordination occurred among the states, represented by their agents (delegates) at the convention, so that what was proposed actually was what the states asked-for in their application.

Indeed, that is the entire reason why the next-to-final version of Article V, which had Congress proposing amendments on application of the states, was replaced with a "convention for proposing amendments." Most of the Founders, and especially George Mason, did not trust Congress to propose the amendment or amendments that would otherwise have been advanced in the states' application under the next-to-final formulation.

Endnotes

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4 For example, "House Bill 1109 of 2015" (State of Texas, Feb. 3, 2015), art. V, http://perma.cc/9T4C-P9YM.

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6 Ibid., Art. II, sec. 7; Art. VII, sec. 2.

7 Ibid., Art. II, sec. 7; Art. VII, sec. 1.

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12 "House Bill 1109 of 2015" (State of Texas, Feb. 3, 2015), Art. VIII, sec. 1-2, http://perma.cc/9T4C-P9YM.

13 Ibid., Art. X, sec. 5, 7.

14 Ibid., Art. VI, sec. 6-10; Art. VIII, sec. 2.

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COMPACT FOR AMERICA

to Fix the National Debt

Compact for a Balanced Budget

Legislative One-Page Overview

The Balanced Budget Amendment – the amendment "Payload" in Article II of the Compact

- Section 1 - balances federal budget by limiting spending to taxes except for borrowing under a constitutional debt limit.
- Section 2 – establishes a constitutional debt limit equal to 105% of outstanding debt at time of ratification
- Section 3 – requires approval of a majority of the state legislatures if Congress desires to increase the debt limit
- Section 4 – requires the President to protect the constitutional debt limit through impoundments Congress can override
- Section 5 – encourages spending and tax loophole reductions to bridge deficits, as opposed to general tax increases
- Section 6 – provides necessary definitions
- Section 7 – provides for self-enforcement of the amendment

The Compact for a Balanced Budget - the "Delivery Vehicle" for the BBA

- Purpose – to greatly simplify the amendment process by combining all the steps required of the state legislature to safely, efficiently, and effectively propose and ratify the Balanced Budget Amendment
- Article I – describes purpose of organizing the states to originate the Balanced Budget Amendment using a compact
- Article II – provides the necessary definitions, **including the actual text of the proposed Balanced Budget Amendment**
- Article III – sets compact membership and withdrawal requirements
- Article IV – establishes the Compact Commission – when 2 states join
- Article V – **applies to Congress for Balanced Budget Amendment Article V convention** – effective when 38 states join
- Article VI – appoints and instructs delegate(s) who will attend the Balanced Budget Amendment Article V convention
- Article VII – details the **convention agenda and rules**, allows first member state to designate Convention Chair
- Article VIII – prohibits participation in convention before Congress consents to Compact; prohibits runaway convention and ratification of runaway proposals by member states
- Article IX – **resolution ratifying the balanced Budget Amendment** – effective when convention proposes amendment and Congress refers amendment to the state legislatures for ratification
- Article X – provides enforcement by state attorney generals, central venue, severability and termination provisions

The Congressional Resolution – the "blessing" of the compact by Congress

- Title 1 – **resolution calling the required convention** in accordance with the terms and provisions of the Compact for a Balanced Budget – effective when 38 states join the Compact
- Title 2 – **resolution referring the Balanced Budget Amendment to the state legislatures for ratification** – effective when convention proposes amendment

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to Fix the National Debt

Why the Compact for a Balanced Budget is Far Safer than the Political Status Quo

- **The political status quo is exceedingly dangerous**.
    - The status quo is a runaway convention in Washington.
    - Keeping the locus of power in Washington will eventually destroy the Constitution.
    - Not using Article V is unilateral disarmament.
        - Not using Article V does not make it go away. It does not disable anti-constitutionalists from using it. It only hobbles constitutionalists and forces them to be reactive rather than proactive. This is a losing strategy.
        - Right now there are anywhere from 200 to 400 Article V resolutions in existence. If the states don't mass political will behind their own Article V effort, what stops Congress from simply calling a puppet Article V convention tomorrow?
- **The Compact is exceedingly safe**.
    - All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered by reference to specific provisions in the Compact (including the identity of delegates, voting procedures, rules, location of convention, etc.).
    - Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact requiring an up or down vote on the contemplated Balanced Budget Amendment are adopted as the first order of business.
        - If any delegate tries to violate this prohibition, all delegates of that delegate's member state are automatically recalled, attorneys general in 38 states are commanded to enforce that recall immediately (in the jurisdiction that is most favorable to constitutionalists-Texas), and that member state's legislature is immediately empowered to select and send new delegates.
    - No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
        - This ensures that the federal courts would not only have to disregard their constitutional duty in tolerating a runaway convention, but also a united front among Congress and supermajorities of the states and the American people.
    - The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
    - The Compact self-repeals in 7 years from its first enactment (April 12, 2021).